

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FULL CIRCLE UNITED, LLC,

Plaintiff,

v.

BAY TEK ENTERTAINMENT, INC.,

Defendant.

Civ. Action No. 1:20-cv-03395

**FULL CIRCLE UNITED, LLC'S
NOTICE OF FILING THE REPORT
AND RECOMMENDATION SERVED BY
THE SPECIAL MASTER ON
JULY 16, 2021**

BAY TEK ENTERTAINMENT, INC.,

Counterclaim Plaintiff,

v.

FULL CIRCLE UNITED, LLC,

Counterclaim Defendant,

and

ERIC PAVONY,

*Additional Counterclaim
Defendant.*

Attachment 1

JAMS ARBITRATION
REF. NO.: 1425035132

-----X

FULL CIRCLE UNITED, LLC,

Plaintiff,

v.

BAY TEK ENTERTAINMENT, INC.,

Defendant.

-----X

BAY TECH ENTERTAINMENT, INC.,

Civ. Action No.:
1:20-cv-03395

Counterclaim-Plaintiff,

v.

FULL CIRCLE UNITED, LLC,

Counterclaim-Defendant,

and

ERIC PAVONY,

Additional Counterclaim Defendant.

-----X

ORDER 1:

By order of Judge Brian M. Cogan, EDNY, and with the agreement of the parties, Justice Shirley Werner Kornreich (ret.) was appointed as Special Discovery Master on June 14, 2021, in the above-captioned case. The parties sent the Special Master the pleadings, the licensing agreement, the papers in the dismissal motion and letters with attachments regarding discovery disputes. A conference, via Zoom, occurred on July 16, 2021. As a result of that conference, the following order is issued.

1. The parties were represented on the call as follows:

Plaintiff & Counter-Defendants (Plaintiff):

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By: Paul Thanasides
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Defendant & Counter-Plaintiff (Defendant):

Mitchell Silberberg & Knupp, LLP
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By: Jeffrey M. Movit
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2. Special Master:

Hon. Shirley Werner Kornreich (ret.)
JAMS
620 Eighth Ave., 34th fl.
New York, N.Y. 10018
212-607-2929 (917-623-3350)
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3. Case Manager:

Anthony Messina
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4. The parties have stated they have an ESI protocol. They have deduplicated their searches, and all documents exchanged will be in searchable form. However, there are a number of disputes regarding search terms and regarding 1 custodian.

- A. Plaintiff named Jeff Hudson, a former employee of both Skee Ball, Inc. (SBI) and Bay Tek Entertainment, Inc. (Bay Tek), as a custodian. Defendant's counsel stated that when a search was run, no documents were found that were responsive for Jeff Hudson as a custodian. It was agreed that the parties would use "Jeff Hudson" as a search term but would use "Live Play", "Full Circle", "Pavone" or "FCU" as modifiers, within 10 words, to narrow the search to relevant documents.
- B. Defendant contends that the agreed-to fields have produced a disproportionate number of documents – 60,000 to 70,000 – and asks that the agreed-to fields be changed to narrow the amount of documents retrieved to 20,000. Specifically, defendant asks that when modifiers are used, the modifier be within 10 words of the search term. Plaintiff objects to the 20,000 amount. The parties will meet and confer on Monday, July 19, 2021 to seek agreement on this dispute.
- C. Plaintiff has requested that one of the search terms be "Beer Ball", a venture Bay Tek attempted prior to its purchase of the Skee Ball mark. Defendant objects to this on the ground of relevance. Plaintiff argues that the term is relevant since, among other things, in its complaint, it posits that Bay Tek purchased Skee Ball to grow a business similar to Beer Ball and to take over plaintiff's business by undermining it. Plaintiff's complaint asserts claims for breach of the good faith clause of the contract and tortious interference with prospective business relationships. It argues that the search term "Beer Ball" is necessary to prove Bay Tek's intent and malice. The Special Master will permit the "Beer Ball" search term to be used in order for plaintiff to seek documents to show Bay Tek's intent, not to prove damages or to demonstrate the use of alcohol by Beer Ball. Thus, the "Beer Ball" search is to be circumscribed by the use of modifiers to effect the appropriate reason for the search. The parties will discuss the modifiers and the dates for the search at the meet and confer on July 19.
- D. Other than the search for "Beer Ball", the documents searched-for will not precede July 17, 2014, the date of the Licensing Agreement. Moreover, the issue of SBI's ownership of the Skee Ball mark is not a subject of discovery. In Section 2 of the Licensing Agreement, plaintiff agreed "never to contest, directly or indirectly,

or take any action, or to assist others in taking any action, directly or indirectly, to attack the legal sufficiency (including on grounds of genericness), status, or ownership of the SKEE-BALL Trademark or SKEE_BALL Registration.”

Nonetheless, Bay Tek will provide Full Circle with proof that it purchased the Skee Ball mark and was properly assigned the License Agreement.

- E. The parties will discuss all outstanding discovery issues, as well as a robust ESI protocol, at the July 17 meet and confer. They each will send a double-spaced, 5-page letter, which shall be exchanged, to the Special Master on or before Wednesday, July 21, 2021, setting forth the ESI protocol and any disputes they have in regard thereto.
 - F. Plaintiff contends that it has produced thousands of documents and 40 videos but has received little in return. Defendant is directed to exchange all documents for which there is no dispute, on a rolling basis, beginning immediately.
5. A zoom conference is to be held on August 24, 2021 at 10:00 AM. The parties are to send the Special Master a joint letter by August 19, 2021, setting forth the conference agenda.

Dated: July 16, 2021

/s/ Shirley Werner Korneich
SHIRLEY WERNER KORNREICH

PROOF OF SERVICE BY E-Mail

Re: Full Circle United, LLC vs. Bay Tek Entertainment, Inc.
Reference No. 1425035132

I, Sutapa Katari, not a party to the within action, hereby declare that on July 16, 2021, I served the attached ORDER NO.1 on the parties in the within action by electronic mail at New York, NEW YORK, addressed as follows:

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Parties Represented:
Eric Pavony
Full Circle United, LLC

I declare under penalty of perjury the foregoing to be true and correct. Executed at New York, NEW YORK on July 16, 2021.

/s/ Sutapa Katari
Sutapa Katari

JAMS
SKatari@jamsadr.com